

LINDA BURT, ESQ.
EXECUTIVE DIRECTOR
WB@ACLUWYOM.COM

JENNIFER HORVATH
STAFF ATTORNEY
JHORVATH@ACLU.ORG



March 12, 2013

Doug Moensch
Assistant Attorney General
Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002

RE: Denial of Driver's Licenses to Deferred Action Recipients

Dear Mr. Moensch:

We, the American Civil Liberties Union of Wyoming and the undersigned immigration law attorneys, are writing in response to complaints that the Wyoming Department of Motor Vehicles (DMV), at the direction of the Wyoming Department of Transportation (WyDOT), declines to issue driver's licenses to immigrants granted permission to remain in the country pursuant to Deferred Action for Childhood Arrivals (DACA). It is our understanding that WyDOT considers DACA recipients to be in the country without lawful status, and thus in violation of immigration laws and ineligible for driver's licenses under state law pursuant to Wyoming Statute § 31-7-108(b)(vi) (stating no license shall issue "to any person who is in violation of the immigration laws of the United States."). We believe this is an incomplete reading of federal immigration laws and Wyoming's statutes pertaining to driver's licenses, and raises serious legal concerns outlined below. We therefore strongly encourage the Attorney General's Office to advise WyDOT to issue driver's licenses to DACA recipients.

We base our conclusion on the following:

1. DACA recipients meet the requirements for the issuance of a driver's license under Wyoming state law.
2. DACA recipients are lawfully present and thus not in violation of federal immigration laws.
3. Wyoming denial of driver's licenses to DACA recipients is inconsistent with federal immigration laws.
4. Officials in at least 38 states have confirmed that DACA recipients will be eligible for or have begun issuing licenses to this group.

1. DACA recipients meet the requirements for the issuance of a driver's license under Wyoming state law.

Section (a) of Wyo. Stat. § 31-7-111, *Application for license or permit generally*, outlines required documentation that must accompany an application for a driver's license, including a fee, proof of residence, and proof of identity. Acceptable proof of identity includes an "employment authorization document." DACA recipients can obtain an employment authorization document (EAD) and an SSN, and many of the documents used to prove residence in the U.S. for DACA applications will suffice as proof of state residence for driver's license purposes.

2. DACA recipients are lawfully present and thus not in violation of federal immigration laws.

Wyo. Stat. § 31-7-108(b)(vi) states that licenses will not be issued to persons who are "violation of the immigration laws of the United States." DACA recipients are lawfully present in the U.S., and thus are not in violation of immigration laws. WyDOT fails to distinguish between lawful presence and lawful status. There are many categories of immigrants who do not have legal status, but are nevertheless lawfully present in the United States. Bo Cooper, Former General Counsel of the Immigration and Naturalization Service, outlines this distinction at length in his Expert Report and Declaration in *Arizona Dream Act Coalition et al v. Brewer*, 2:12-CV-02546-DCG, which is currently in litigation (see attached).

The distinction between lawful presence and formal immigration status is not restricted to cases of deferred action. There are many situations in which individuals are permitted to remain in the country without formal immigration status. For example, people with pending applications for asylum or adjustment of status may be authorized by DHS to remain in the United States and granted employment authorization although they lack status. The same is true of certain survivors of domestic violence who have filed petitions under the Violence Against Women Act.

[A]lthough deferred action does not provide formal immigration status, it is, by definition, a grant of permission by the federal government to remain in the United States for a given period. From the agency's perspective, approved deferred action represents *per se* legal authorization to be present in the United States.

Expert Report and Declaration of Bo Cooper, *Arizona Dream Act Coalition et al v. Brewer*, 2:12-CV-02546-DCG, December 11, 2012, at 9-10.

A lack of formal immigration status does not mean that an immigrant's presence in the U.S. is unauthorized. The federal government treats authorized presence and formal immigration status as distinct, and this distinction is evident in many instances outside the DACA program. (see BC-9) while deferred action may not confer a formal immigration status, individuals granted deferred action under DACA are authorized under federal law to be present and are lawfully present in the U.S.

USCIS confirmed exactly this earlier in this year in its updated Frequently Asked Questions, available at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3c5b9ae89243c6a7543f6d1a/?vgnextoid=3a4dbc4b04499310VgnVCM100000082ca60aRCRD&vgnextchannel=3a4dbc4b04499310VgnVCM100000082ca60aRCRD> (see Answers to Question Nos. 1, 6, and 10).

Deferred action recipients are considered "lawfully present" for other benefits, as well, such as Social Security, under 8 U.S.C. § 1611(b)(2). See 8 C.F.R. § 1.2(a)(4)(iv). In addition, under REAL ID, Congress expressly specified that deferred action status authorizes an immigrant's presence in the U.S. for the purpose of obtaining a driver's license. 49 U.S.C. § 30301 note, Sec. 202(c)(2)(C)(i)-(ii). It is worth noting that the Department of Homeland Security certified Wyoming as REAL ID compliant on December 20, 2012. See DHS Determines 13 States Meet REAL ID Standards, available at <http://www.dhs.gov/news/2012/12/20/dhs-determines-13-states-meet-real-id-standards>.

3. Wyoming denial of driver's licenses to DACA recipients is inconsistent with federal immigration laws.

WyDOT has, in a manner inconsistent with federal immigration laws and without rational basis, carved out a special class of deferred action to whom it denies benefits. Again, Bo Cooper outlines how policies like that of Wyoming interfere with federal immigration policies.

Arizona's effort to characterize DACA recipients as unauthorized interferes with the core federal structure underlying

DHS prosecutorial discretion. A single, coordinated federal approach is necessary to balance the numerous, competing policy concerns and limited resources involved in regulating immigration and administering the immigration laws. Arizona's withholding of driver's licenses frustrates the federal government's policy choice that, for the period of the grant recipients of deferred action be permitted to live and work in the United States. In announcing the DACA program, the Executive Branch expressed a clear intent that DACA beneficiaries be permitted to remain in the United States so that they can continue to have the opportunity to contribute to society through work, entrepreneurship, education, and public service. Arizona's denial of driver's licenses directly frustrates these objectives.

The alternative would be to permit every federal judgment on prosecutorial discretion to become dependent on ratification by lawmakers in each individual state. This would frustrate Congress's intent that the Executive Branch be entrusted with discretion to enforce and implement the immigration laws.

Expert Report and Declaration of Bo Cooper, *Arizona Dream Act Coalition et al v. Brewer*, 2:12-CV-02546-DCG, December 11, 2012, at 12-13.

In addition, Wyoming's practice raises serious equal protection concerns, ably raised in Stephen W. Yale-Loehr's Expert Report and Declaration in *Arizona Dream Act Coalition et al v. Brewer*, 2:12-CV-02546-DCG, December 11, 2012.

4. Officials in at least 38 states have confirmed that DACA recipients will be eligible for or have begun issuing licenses to this group.

Currently, at least 38 states (AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MA, MI, MN, MS, MO, NC, NV, NH, NJ, NM, NY, OK, OR, PA, RI, SC, TN, TX, UT, VA, WI) have confirmed they are issuing or intend to issue driver's licenses to DACA recipients. See Overview of State Driver's License Requirements for Individuals Granted Deferred Action under the Deferred Action for Childhood Arrivals (DACA) Policy Table, available at <http://www.nile.org/dacadriverslicensesetbl.html>. In Washington State, DACA recipients, like other applicants, are eligible for a driver's license or driver's privilege card regardless of their status. *Id.*

For the reasons outlined, we strongly encourage the Attorney General's Office to advise WyDOT and DMV to issue licenses to DACA recipients, as is consistent with Wyoming state laws and federal immigration laws. Please feel free to contact us if you have any questions. We look forward to your response.

Sincerely,



Jennifer Horvath
Staff Attorney
American Civil Liberties Union of Wyoming
P.O. Box 20706
Cheyenne, WY 82003
(307) 637-4565
jhorvath@aclu.org

_____/s_____
Elisabeth M. W. Trefonas
Attorney at Law
Trefonas Law, P.C.
P.O. Box 2527
Jackson, WY 83001
(307) 203-9019
emwt@trefonaslaw.com

_____/s_____
Jon B. Huss
Law Office of Jon Huss
330 South Center Street, Suite 306
Casper, WY 82601
(307) 265-3363
jhuss@vcn.com

Enclosures:

Expert Report and Declaration of Bo Cooper, *Arizona Dream Act Coalition et al v. Brewer*, 2:12-CV-02546-DCG, December 11, 2012; Stephen W. Yale-Loehr's Expert Report and Declaration in *Arizona Dream Act Coalition et al v. Brewer*, 2:12-CV-02546-DCG, December 11, 2012.

Cc:

John F. Cox, Director
Wyoming Department of Transportation
5300 Bishop Boulevard
Cheyenne, WY 82009